

LS-9373

(Kaiser) - 4

OGC Has Reviewed

2 September 1954

MEMORANDUM FOR: Comptroller

25X1A9A SUBJECT : Claim of [] for Personal Property Damage

1. There is forwarded herewith the claim of one [] Agency employee, in the amount of \$47.50 for damages allegedly sustained to his wearing apparel.

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2. The record indicates that while working in the RAS building, [] trousers were torn when he brushed against a table, the outer edges of which contained a series of protruding nails; that previously he had experienced a similar accident at the same location; and that he had known that the garments of other employees had been damaged by the same table. The file also contains a notation that [] duties did not require him to locate his equipment so that he would be required to circumvent the table.

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3. The Agency has authority under the provisions of Section 2672 of Title 28 (Federal Tort Claims Act), to settle claims not exceeding \$1,000, for damage to property occurring under circumstances, where the Government, if a private individual would be similarly liable in accordance with the laws of the place where the damage occurred. Accordingly, the validity of subject claim must be determined in accordance with the laws of the District of Columbia.

4. Assuming but not conceding that the duty of an employer to provide a reasonably safe place to work was violated here, the laws of this jurisdiction preclude recovery in cases where it is found that the claimant has in some manner contributed to the injury complained of. This is otherwise known as the defense of contributory negligence, and it signifies a failure on the part of the injured party to exercise "care" or "prudence", or to use "precautions" for his own protection.

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5. The care or prudence which an individual must exercise so as not to be precluded from recovery on the basis of contributory negligence is described as being "ordinary" or "reasonable"; the question of whether he did, in fact, exercise this degree of care is determined by comparing his conduct with that of a "prudent" person in the same circumstances. Having regard for the fact that [] knew of the existence of the nails; that he knew that other individuals had been similarly injured;

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that the injury now complained of is the second he has experienced; and that the Government may be held liable here only under the same conditions as would a private party, it is our opinion that the facts presented do not permit the assessment of liability against the United States.

6. Accordingly, based on the facts submitted, it is the recommendation of this office that subject claim be denied.

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Office of General Counsel

Attachment.

OGC:RJB:jk

Orig. - Addressee

- 1 - Legal
- 1 - Vital
- 1 - Subject ✓
- 1 - Signer
- 1 - Chrono

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MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

Attachments Missing